



State of Utah

Department of
Environmental Quality

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Executive Director

DIVISION OF AIR QUALITY
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CC: Tom Munson

RECEIVED
APR 04 2005
DIV. OF OIL, GAS & MINING

DAQC-477-2005
Site ID 13072

March 30, 2005

SENT VIA CERTIFIED MAIL NO. 7003 2260 0002 0247 1530
Return Receipt Requested

Tony Christofferson
H. E. Davis Construction, Inc.
525 West Arrowhead Trail
P.O. Box 488
Spanish Fork, Utah 84639

Dear Mr. Christofferson:

Re: Proposed Settlement Agreement in the matter of H.E. Davis Construction, Juab County Utah

H.E. Davis Construction operates a gypsum mine and processing plant located at the mouth of Chicken Creek Canyon near Levan in Juab County, Utah.

On October 12, 2004, an inspector of the Division of Air Quality observed excessive fugitive dust from truck loading at the gypsum mine site. The inspector informed Tony Christofferson, that the excessive fugitive dust was in violation of UAC R307-205-5, Fugitive Emissions and Fugitive Dust – Mining Activities.

On November 3, 2004, the Division issued a Compliance Advisory to H.E. Davis Construction. On November 22, 2004, H.E. Davis Construction responded to the Compliance Advisory. Additional information was submitted by the company on December 14, 2004, and a meeting was held, during which the above-related compliance issues were discussed. Based on H.E. Davis Construction's response to the Compliance Advisory, the Division determined that H.E. Davis Construction was in violation of: UAC R307-205-5, for failing to minimize fugitive dust and UAC R307-401-1, for failing to submit a Notice of Intent and receive an Approval Order for this operation prior to constructing and operating.

A proposed settlement agreement was sent to H.E. Davis Construction on January 13, 2005. On February 2, 2005, H.E. Davis Construction contacted DAQ and requested a meeting to discuss the violations and proposed settlement agreement. The meeting was held on February 10, 2005, and H.E. Davis Construction submitted a supplemental environmental project proposal (SEP) on February 23, 2005. Additional SEP information was submitted by DAQ request on March 4, 2005.

Section 19-2-115 of the Utah Code Annotated provides that violators of the Utah Air Conservation Act and/or any order issued thereunder may be subject to a civil penalty of up to \$10,000 per day for each violation. Based upon our civil penalty policy, we calculated a preliminary civil penalty for the above listed violations of \$16,500. The monetary amount of the Division's settlement offer specified below is derived from a pre-established schedule of penalties, which takes into account, among other factors, the magnitude and severity of the violation, cooperation of the source, as well as the prior history of violations at the facility. All parties we deal with, whether private, commercial, or governmental, are treated similarly in the settlement process. Settlement offers are based on the evaluation of the same factors and criteria in all cases. The Division acknowledges that the violation on October 12, 2004, was addressed by the company in a Notice of Intent and Fugitive Dust Control Plan submitted to the Division on December 7, 2004.

If you are interested in settling this violation, we are authorized to offer settlement in accordance with the Division's settlement policy as follows:

1. Payment of a reduced civil penalty in the sum of \$13,200, one half of the penalty, calculated at \$6,600, will be paid in cash. The remaining half of the penalty will be applied on a ratio of 1.5/1.0 toward the proposed supplemental environmental project (SEP) submitted by H.E. Davis Construction on March 4, 2005. The SEP is to be completed as follows:
 - a. H.E. Davis Construction agrees to spend a minimum of \$9,900 ($\$6,600 \times 1.5/1.0$) applying 3 inch thick asphalt paving to the ingress and egress of the Levan gypsum mine site.
 - b. The asphalt paving will consist of a minimum of 13,199 square feet.
 - c. The asphalt paving project will be completed no later than June 30, 2005.
 - d. H.E. Davis Construction will submit receipts for final costs and photos of the completed project to the DAQ no later than July 14, 2005.
2. Payment of a civil penalty precludes further civil prosecution for the above-described violation against the named source. The Division retains its authority to take enforcement actions based on any and all violations not specifically described above.
3. In the event any further violations of air quality regulations occur, the Division may consider the violation described above in assessing a penalty for the subsequent violations, in accordance with the provisions of UAC R307-130.
4. Entering into this settlement shall not constitute an admission of violation of the air quality rules, nor shall it be inferred to be such an admission in any administrative or judicial proceeding. The described violation will constitute part of the source's compliance history for any purpose for which such history is relevant to the Division of Air Quality.

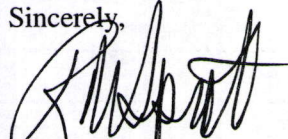
This letter constitutes an offer of settlement and is not a demand for payment. We will be glad to consider any information you wish to submit related to the alleged violation. The agreement reflects a reduced penalty for early settlement of this matter.

If the above terms are acceptable to you, sign and return a copy of this letter and a check in the sum of \$6,600, which reflects the reduced penalties, made payable to the Utah Division of Air Quality, at the letterhead address.

You may write or call to request a settlement conference with a member of the Division's compliance staff listed below. A conference must be scheduled within twenty (20) days of your receipt of this settlement proposal letter. If you request such a meeting this settlement offer is immediately revoked.

If we do not hear from you within twenty (20) days of your receipt of this settlement proposal letter, we will assume that you are not interested in resolving this matter as outlined above and will refer the violation to a formal enforcement process. Please call Jay Morris at (801) 536-4079 if you have any further questions regarding this matter.

Sincerely,



Richard W. Spratt, Executive Secretary
Utah Air Quality Board

RWS:JPM:aj

cc: Central Utah Public Health Department
Department of Natural Resources – Division of Oil, Gas and Mining

Acceptance of Settlement Offer

I have read the above settlement and agree to the terms and conditions of this offer.

Name:

Title:

Signature Date (_____) Telephone Number

Enclosures: Penalty Calculation and Criteria

Source: Clyde Companies - H E Davis Construction- Levan Gypsum Plant						Class Unknown											
SID No.: HPV: No						Violation Date: October 12, 2004 Home											
						E v e n t s	C a t e g o r y	Gravity Criteria (Gc) No(0), Possibly(1), Probably(2), Definitely(3)								Gravity Criteria	
Table 1: Gravity Criteria								Gc 1	Gc 2	Gc 3	Gc 4	Gc 6	Daily Gravity	Accumulated Gravity			
Citation	Description of the violation Description of Events Resulting in Excess Emissions																
R307-401-1	Did not submit an NOI prior to constructing and operating equipment at this site							1	B	3	3	2	3	0	\$7,000.00	\$7,000.00	
UAC R307-205-5	Failing to minimize fugitive dust from mining activities							1	B	3	3	2	3	0	\$7,000.00	\$7,000.00	
Gc 5 History of violations within the last five (5) years? Enter "d" in Category →						d											
Violations of the same rule within the last five (5) years? Enter "d" in Category →						d											
Total Gravity						\$2,500.00 \$2,500.00											
						\$16,500.00 \$16,500.00											
Table 2: Adjustments																	
Economic Benefit	EPA "BEN" Model (Collected)																
Other																	
	Other Monies Collected																
	SEP - (Credited) \$6,600.00																
Early Settlement Reduction (20%) - \$3,300.00																	
Total Penalty \$6,600.00																	
Gravity Criteria Definitions																	
Gc 1. Was the violation a result of excess emissions and/or reporting?																	
(0) Answer "no"	If the violation was not the result emissions, reporting, or other																
(1) Answer "possibly"	If a minor reporting or other problem occurred, but no emissions were involved																
(2) Answer "probably"	If a reporting or other problem occurred which involved emissions																
(3) Answer "definitely"	If a permit reporting or other significant problem occurred involving emissions																
Gc 2. Was it a willful of knowing violation?																	
(0) Answer "no"	If the violator obviously did not know that the action or inaction constituted a violation?																
(1) Answer "possibly"	If the violator should have know																
(2) Answer "probably"	If the violator likely knew																
(3) Answer "definitely"	If the violator clearly knew																
Gc 3. Was the violator unresponsive in correcting the violation?																	
(0) Answer "no"	If the violation was corrected as soon as the violator learned of it 1dy.																
(1) Answer "possibly"	If the violation was corrected in a less timely and cooperative fashion 2-7 days.																
(2) Answer "probably"	If the violator attempted to correct the problem, but did not correct it 8-30 days																
(3) Answer "definitely"	If the violator did not attempt to correct the problem > 30 days.																
Gc 4. Was the violation a result of improper operation or inadequate maintenance?																	
(0) Answer "no"	If the violator was following an acceptable O & M plan																
(1) Answer "possibly"	If the violator was following an O & M plan that was not adequate																
(2) Answer "probably"	If the violator did not have an O & M plan																
(3) Answer "definitely"	If the violator did not have an O & M plan and the violation was clearly a result of improper O & M																
Gc 6. Did the violator benefit economically from noncompliance?																	
(0) Answer "no"	If the violator clearly did not obtain any economic benefit (less than \$5,000)																
(1) Answer "possibly"	If the violator may have benefited																
(2) Answer "probably"	If the violator benefited, but the benefit is not quantifiable																
(3) Answer "definitely"	If the economic benefit to the violator is quantifiable (use BEN Program)																

R307-130. General Penalty Policy

R307-130-1 Scope.

This policy provides guidance to the executive secretary of the Air Quality Board in negotiating with air pollution sources penalties for consent agreements to resolve non-compliance situations. It is designed to be used to determine a reasonable and appropriate penalty for the violations based on the nature and extent of the violations, consideration of the economic benefit to the sources of non-compliance, and adjustments for specific circumstances.

R307-130-2. Categories.

Violations are grouped in four general categories based on the potential for harm and the nature and extent of the violations. Penalty ranges for each category are listed.

Category A - \$7,000 to \$10,000 per day

Violations with high potential for impact on public health and the environment including:

- (a) Violations of emission standards and limitations of NESHAP
- (b) Emissions contributing to non-attainment area or PSD increment exceedances.
- (c) Emissions resulting in documented public health effects and/or environmental damage.

Category B \$2,000 to \$7,000 per day

Violations of the Utah Air Conservation Act, applicable state and federal regulations, and orders to include:

- (a) Significant levels of emissions resulting from violations of emission limitations or other regulations which are not Category A
- (b) Substantial non-compliance with monitoring requirements.
- (c) Significant violations of approval orders, compliance orders, and consent agreements not within Category A
- (b) Significant and/or knowing violations of "notice of intent" and other notification requirements.
- (e) Violations of Reporting requirements

Category C Up to \$2,000 per day

Minor violations of the Utah Air Conservation Act, applicable state and federal regulations, and orders having no significant public health or environmental impact to include:

- (a) Reporting violations
- (b) Minor violations of monitoring requirements, orders and agreements.
- (c) Minor violations of emission limitations or other regulatory requirements

Category D Up to \$299.00

Violations of specific provisions of which are considered minor to include:

- (a) Violations of automobile emission standards and requirements.
- (b) Violation of wood-burning regulations by private individuals
- (c) Open burning violations by private individuals.